

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

COUPONS, INC.,

Plaintiff,

v.

DOES 1-12,

Defendants.

Case No.: C 05-2115 PVT

**ORDER GRANTING LEAVE TO
CONDUCT EARLY DISCOVERY; AND
DENYING MOTION FOR AN ORDER
DIRECTING TIME WARNER CABLE TO
DISCLOSE SUBSCRIBER INFORMATION**

On June 9, 2005, Plaintiff Coupons, Inc. ("Coupons") filed Plaintiff's Ex Parte Motion for an Order Directing Time Warner Cable to Disclose Subscriber Information.¹ Based on the moving papers and the file herein,

IT IS HEREBY ORDERED that, to the extent Coupons seeks a preemptive order directing non-party Time Warner to disclose subscriber information without first being subpoenaed, and without notifying its subscriber, the motion is DENIED. Coupons has not shown that this court has jurisdiction over Time Warner, since it appears Coupons has not yet served a subpoena on Time Warner. And Coupons cites no authority which, absent valid service of a subpoena, allows a court to order a non-party to disclose information. Nor has Coupons cited any legal authority for ordering Time Warner not to notify its subscriber once Coupons does serve it with a subpoena. On the contrary, the authority Coupons cites expressly *requires* a cable operator to notify its subscriber if it

¹ The holding of this court is limited to the facts and the particular circumstances underlying the present motion.

1 is ordered to disclose personally identifiable information. *See*, 47 U.S.C. § 551(c)(2)(B).

2 While the court understands Coupons' concern that notice to the subscriber might make
3 service of process more difficult, a subscriber generally has a right to challenge a plaintiff's inquiry
4 into his or her identity. *See, e.g., Sony Music Entertainment, Inc., et al. v. Does 1-40*, 326 F.Supp.2d
5 556 (2004) (denying Doe defendants' motion to quash subpoena seeking discovery of their identities
6 where the plaintiff made a concrete prima facie showing of copyright infringement); and *Rocker*
7 *Mgmt. v. John Does*, 2003 WL 22149380 (N.D.Cal. 2003) (granting Doe defendant's motion to
8 quash subpoena seeking discovery of defendant's identity where the plaintiff had not demonstrated
9 that the defendant had libeled the plaintiff in a Yahoo chat room). Coupons has not cited any
10 authority for depriving a Doe defendant of an opportunity to challenge a subpoena served on an
11 internet service provider seeking the defendant's identifying information.

12 IT IS FURTHER ORDERED that, to the extent Coupons' motion seeks relief from Federal
13 Rules of Civil Procedure 26(d) in order to conduct early discovery,² the motion is GRANTED
14 for the limited purpose of allowing Coupons to propound discovery aimed at identifying the Doe
15 Defendants. Relief from the Rule 26(d) automatic stay on discovery is warranted to allow Coupons
16 to propound discovery designed to obtain identifying information regarding the Doe Defendants. *See*
17 *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980) (noting that, where a plaintiff does not know
18 the identities of alleged defendants before filing a complaint, the plaintiff should be allowed to
19 conduct discovery to identify the unknown defendants). Absent further leave of court, this relief
20 from the automatic stay on discovery is limited to discovery seeking the Doe Defendants' names,
21 telephone numbers, and addresses (including residential, business, mailing and/or email).

22 Dated: 6/15/05

23 /s/ Patricia V. Trumbull
24 PATRICIA V. TRUMBULL
25 United States Magistrate Judge
26

27 ² While Coupons did not expressly seek leave from Rule 26(d), judicial economy is best
28 served by deeming Coupons to have now done so. It appears from Coupon's moving papers that
Coupons already served a subpoena on Deal-A-GoGo in violation of the Rule 26(d) automatic stay on
discovery. Coupons is cautioned that any future violation of the rules may well result in sanctions.